



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

David Bruce
90 Fremont Road
P.O. Box 910
Raymond, NH 03077

Re: Governor's Forest Community Water System
Fremont, New Hampshire

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 04-058**

December 1, 2004

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to David Bruce, pursuant to RSA 482-B:8, II and Env-C 616. The Division is proposing that fines totaling \$4,000 be imposed against David Bruce for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302.
2. David Bruce is an individual doing business as Earthmovers, having a mailing address of 90 Fremont Road, P.O. Box 910, Raymond, NH 03077.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 482-B regulates water well contractors and pump installers and establishes the NH Water Well Board ("Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "Water Well Rules"). Under RSA 482-B:8 and :16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.
2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.
3. RSA 482-B:5, I, requires a person to obtain a pump installer license from the NH Water Well Board ("Board") prior to engaging in the business of pump installation.
4. Governor's Forest Community Water System is a small community water system located in Fremont, NH, and is served by three bedrock wells numbered 2, 3, and 4.

5. During the period between June 12, 2003 and September 10, 2003, David Bruce d/b/a Earthmovers installed a 2 Hp submersible pump in well No. 2 and a 2 Hp submersible pump in well No. 3.
6. NH Water Well Board records indicate that David Bruce has not been issued a pump installer license.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINE

1. David Bruce has violated RSA 482-B:5 by installing a submersible pump in well No. 2 located at the Governor's Forest Community Water System, Fremont, NH without first obtaining a pump installer license.
2. David Bruce has violated RSA 482-B:5 by installing a submersible pump in well No. 3 located at the Governor's Forest Community Water System, Fremont, NH without first obtaining a pump installer license.
3. For the violations identified above, Env-C 616.02(d) specifies a fine of \$2,000 for each violation.

The total fine being sought is \$4,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Mr. Bruce has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, February 7, 2005 at 1:00pm in Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, Mr. Bruce is required to respond to this notice.** Please respond **no later than January 7, 2005**, using the enclosed colored form as follows:

1. If Mr. Bruce plans to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If Mr. Bruce chooses to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Mr. Bruce wishes to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Mr. Bruce's interest in settling.

Mr. Bruce is not required to be represented by an attorney. If Mr. Bruce chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Mr. Bruce wishes to have a hearing but are unable to attend as scheduled, Mr. Bruce must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If Mr. Bruce does not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in Mr. Bruce's absence in accordance with Env C 204.09.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that David Bruce committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that David Bruce committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that David Bruce proves, by a preponderance of the evidence**, applies in this case:

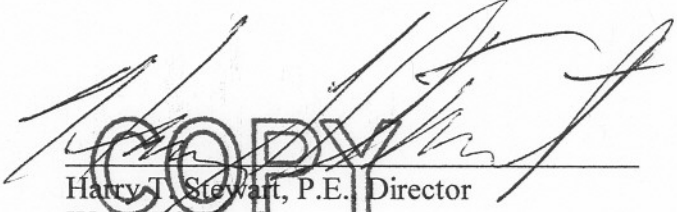
1. The violation was a one-time or non-continuing violation, **and** David Bruce did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** David Bruce did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, David Bruce was making a good faith effort to comply with the requirement that was violated.
3. David Bruce has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to David Bruce's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that David Bruce committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is David Bruce's opportunity to present testimony and evidence that David Bruce did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If David Bruce has any evidence, such as photographs, business records or other documents, that believes show that David Bruce did not commit the violation(s) or that otherwise support David Bruce's position, David Bruce should bring the evidence to the hearing. David Bruce may also bring witnesses (other people) to the hearing to testify on David Bruce's behalf.

If David Bruce wishes to have an informal meeting to discuss the issues, David Bruce must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If David Bruce has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.


COPY
Harry T. Stewart, P.E. Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Gretchen R. Hamel, Administrator, DES Legal Unit
Michael J. Wall, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Water Well Board
Anne Edwards, NHDOJ
Harrison Mackey, Licensing Coordinator, DES
Rick Schofield, WD WSEB

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DAVID BRUCE IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN JANUARY 7, 2005

APPEARANCE On behalf of David Bruce

_____ I will attend the hearing scheduled for Monday, February 7, 2005, at 1:00pm. in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

WAIVER OF HEARING On behalf of David Bruce

_____ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$4,000 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

RETURN THIS PAGE ONLY TO:

Department of Environmental Services ~ Legal Unit

Attn: Michael Sclafani, Legal Assistant

29 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095